

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CRIMINAL NO. 3:00CR210

UNITED STATES OF AMERICA

VS.

MARY ALICE AVERY

)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on receipt of Defendant's letter dated December 17, 2007, in which she requests the Court appoint counsel for her "to appeal [her] case." She also states that "[b]ased on Kimbrough v. United States I would like to appeal my case for crack cocaine."

The undersigned sentenced the Defendant on September 24, 2002, to a term of 135 months imprisonment for conspiracy to possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §§ 846 and 841(a)(1). **Judgment in a Criminal Case, filed October 16, 2002.** She did not file a direct appeal of her conviction and sentence. On July 15, 2003, the Defendant filed a motion to vacate, set aside, or correct

sentence pursuant to 28 U.S.C. § 2255. The undersigned denied the motion and the case was dismissed by Judgment filed October 23, 2003. The Defendant did not appeal the Court's Judgment.

It is difficult to determine what relief the Defendant actually seeks since the time for filing an appeal has long expired in both the criminal and civil cases and the Court is without jurisdiction to either extend or reopen the time for the appeal. **See Fed. R. App. P. 4(a)(5), (6).** Therefore, affording the Defendant's letter a literal interpretation, the Court will direct the Clerk to file the Defendant's letter as a notice of appeal and that the letter be forwarded to the Fourth Circuit Court of Appeals.

IT IS, THEREFORE, ORDERED that the Defendant's letter be filed as a notice of appeal and the same be forwarded to the Fourth Circuit Court of Appeals.

The appointment of appellate counsel is respectfully referred to the Fourth Circuit Court of Appeals.

Signed: January 4, 2008



Lacy H. Thornburg
United States District Judge

